

## § 701.55

(1) The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DON activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The DON activity determines in accordance with § 701.48 that such a waiver is in the interest of the United States.

(d) Fee rates. (1) Manual search.

Type	Grade	Hourly rate
Clerical .....	E9/GS8 and below .....	\$13.25
Clerical (Minimum Charge) .....	.....	8.30
Professional .....	01 to 06/GS9 to GS15 .....	(**)
Executive .....	07/GS16/ES-1 and above .....	(**)

\*\*Rate to be established at actual hourly rate prior to search. A minimum charge will be established at ½ Minimum Charge)

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale for manual search) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) Duplication.

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents .....	\$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card .....	.75
When key punched and verified, per card .....	.85
Diazo duplicate negative, per card .....	.65
When key punched and verified, per card .....	.75
35mm roll film, per frame .....	.50
16mm roll film, per frame .....	.45
Paper prints (engineering drawings), each .....	1.50

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Type	Cost
Paper reprints of microfilm indices, each ...	.10

(4) Review Time.

Type	Grade	Hourly rate
Clerical .....	E9/GS8 and below .....	\$13.25
Clerical Minimum Charge .....	E9/GS8 and below .....	8.30
Professional .....	01 to 06/GS9 to GS15 .....	(**)
Executive .....	07/GS16/ES1 or higher .....	(**)

\*\*Rate to be established at actual hourly rate prior to search. (A minimum charge will be established at ½ Minimum Charge)

(5) Other technical data records. Charges for any additional services not specifically provided in paragraph (d) of this section, consistent with Volume 11A of DoD 7000.14-R (NOTAL) shall be made by DON activities at the following rates:

Minimum charge for office copy up to six images)—\$3.50

Each additional image—\$ .10

Each typewritten page—\$3.50

Certification and validation with seal, each—\$5.20

Hand-drawn plots and sketches, each hour or fraction Thereof—\$12.00

## § 701.55 Processing FOIA fee remittances.

(a) Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

(b) Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

(c) Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

## Subpart D—FOIA Exemptions

### § 701.56 Background.

The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to

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be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

### § 701.57 Ground rules.

(a) *Identity of requester.* In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized in systems notice and by a FOIA exemption.

(b) *Reasonably segregable.* Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to unintelligible gibberish.

(c) *Discretionary release.* A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

(d) *Initial Denial Authority (IDA) actions.* The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in § 701.4.

### § 701.58 In-depth analysis of FOIA exemptions.

An in-depth analysis of the FOIA exemptions is addressed in the DOJ's annual publication, "Freedom of Information Act Guide & Privacy Act Overview." A copy is available on the DOJ's FOIA website (see Navy FOIA website

at <http://www.ogc.secnav.hq.navy.mil/foia/index.html> for easy access).

### § 701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

(a) 5 U.S.C. 552 (b)(1): Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

(1) Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified based on the Executive Order on classification (i.e., Executive Order 12958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(i) Glomar response: The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Compilation: Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

(b) 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules